

No. 15-15777

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

v.

JOHN THAT LUONG,

Defendant/Appellant.

**MOTION FOR EXTENSION OF TIME TO
FILE REQUEST FOR CERTIFICATE OF APPEALABILITY;
DECLARATION OF COUNSEL**

Appeal from the United States District Court
for the Northern District of California
The Honorable Jeffrey S. White
United States District Judge
No. 96 Cr. 94 JSW

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JOHN THAT LUONG

Pursuant to Federal Rules of Appellate Procedure 22 and 27, and Ninth Circuit Rule 22-1, Appellant John That Luong, by and through his counsel, respectfully moves for a 30-day extension of time in which to file a motion for a certificate of appealability (“COA”). Mr. Luong’s motion for a COA is currently due on or before April 22, 2015. This motion, if granted, would extend the time for filing the motion until May 22, 2015. Mr. Luong is currently serving a sentence of 65 years imprisonment.

Respectfully submitted,

DATED: April 17, 2015

COLEMAN, BALOGH & SCOTT LLP

/s/ E A Balogh
ETHAN A. BALOGH

Attorneys for Defendant/Appellant
JOHN THAT LUONG

DECLARATION OF ETHAN A. BALOGH

1. I am an attorney admitted to practice before this Court and am counsel to Appellant John That Luong. Except where otherwise expressly noted, I make this declaration on personal knowledge, and if called as a witness could testify competently to the facts set forth herein.

2. This appeal arises out of the district court’s March 18, 2015 entry of judgment denying Mr. Luong’s motion under 28 U.S.C. § 2255, his motion for discovery, and a COA. Clerk’s Record (“CR”) 2151-52. The underlying criminal case involved complex allegations of substantive RICO, RICO conspiracy, Hobbs Act conspiracy, Hobbs Act robbery, use of a firearm during and in relation to a crime of violence, conspiracy to distribute heroin, heroin distribution, and a “phone count.” Mr. Luong sustained convictions after an approximately four month jury trial. On direct appeal, this Court affirmed Mr. Luong’s convictions but remanded for resentencing. Following resentencing, this Court affirmed, and these section 2255 proceedings followed.

3. As noted, the district court denied a COA on March 18, 2015. Under Ninth Circuit Rule 22-1(d), the 35-day deadline for Mr. Luong to move this Court for a COA expires on April 22, 2015. By this motion and declaration, I respectfully request a 30-day extension of time to permit me until May 22, 2015 to

prepare and file Mr. Luong's request for a COA. As set forth in this declaration, I have exercised diligence in this matter and believe that this extension, if granted, will be sufficient to permit preparation and filing of Mr. Luong's motion for a COA within the time requested.

4. The circumstances of this appeal present a substantial need supporting the requested extension. As noted, this is a large, complex case in which Mr. Luong—while he was proceeding *pro se*—initially raised 13 claims for relief. Following my appointment by the district court, Mr. Luong withdrew nine claims, leaving four (with sub-claims) for adjudication. The remaining claims are factually and legally complex, and thus require further legal research and assessment, in light of the district court's order, in connection with Mr. Luong's motion for a COA from this Court. As of this writing, we have made substantial progress in that respect, but require additional time to complete our research and analysis.

5. We also require additional time to communicate with Mr. Luong regarding these proceedings. I am informed and believe that Mr. Luong is currently housed in administrative segregation—thus impeding our ability to communicate with him—but he intends to send materials for our consideration in

connection with this appeal. Accordingly, we require additional time to obtain Mr. Luong's feedback, and respond to him.

6. Finally, the circumstances of my recent and current responsibilities also present a substantial need supporting the requested extension. My obligations have recently been, and in the near term will continue to be, significant. Since the district court's March 18, 2015 order, I have:

- (a) Commenced intensive trial preparation in *United States v. Cooper*, N.D. Cal. Case No. 13 Cr. 693 SI, including preparation and filing of two pretrial motions, 15 motions in limine, responding to the Government's seven motions in limine, and preparing other substantive pretrial pleadings;
- (b) Filed our client's opening brief in *United States v. Galvez-Machado*, No. 14-50138; and
- (c) Devoted substantial time to plea negotiations in a 17-defendant RICO/VICAR case captioned *United States v. Alvarez*, N.D. Cal. Case No. 14 Cr. 120 EMC.

7. In addition to the foregoing responsibilities, I have had and continue to have obligations to other courts and clients, but do not describe them here.

8. For the foregoing reasons, I ask the Court to recognize the good cause, diligence, and substantial need supporting this request, and to permit Mr. Luong to file a request for a COA on or before May 22, 2015.

Under penalty of perjury of the laws of the United States, I declare the foregoing is true and correct.

Dated: April 17, 2015

/s/ E A Balogh
ETHAN A. BALOGH

PROOF OF SERVICE

I, Ethan A. Balogh, certify that on April 17, 2015 I caused to be filed electronically a copy of this motion and declaration with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, and that all parties to whom I am required to provide service are registered CM/ECF users, and that service of the motion and declaration shall be accomplished by the appellate CM/ECF system.

/s/ E A Balogh

Dated: April 17, 2015

ETHAN A. BALOGH